

1 The Honorable Marc L. Barreca
2 Chapter 11
3 Hearing Date: March 12, 2019
4 Hearing Time: 10:00 a.m.
5 Hearing Location: Seattle, Room 7106
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11 UNITED STATES BANKRUPTCY COURT
12 WESTERN DISTRICT OF WASHINGTON
13 AT SEATTLE
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15 In Re:

16 NATURAL MOLECULAR TESTING
17 CORPORATION,

18 Debtor.

19 No. 13-19298-MLB

20 Beau Fessenden's Objection to Trustee's
21 Ex Parte Motion to File Reply Brief (Dkt
22 1074) and to Court's Order Granting Reply
(Dkt 1076)

23 Beau Fessenden objects to Trustee's Ex Parte Motion for Permission for Trustee
24 to File Reply Brief (Dkt. 1074) and to Court's Order Allowing Trustee to File Reply Brief
(Dkt 1076).

1. Denial of due process. Mr. Fessenden was given no opportunity to object to the
2. motion and the court granted the motion only forty minutes after being filed. Mr.
3. Fessenden has been denied due process.
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5. No new issues or arguments. The basis for the Trustee's motion is "new issues
6. and arguments." None are identified and none exist. The court identified the
7.

1 issues in its recent ruling and gave the Trustee two submissions to address them.
2 The documents submitted by Mr. Fessenden were either (i) taken from the
3 Trustee's prior submissions, or (ii) from the publicly available court file. Is the
4 Trustee asserting that he just learned that the Settlement Agreement has an
5 integration clause or that Washington law enforces them? Is the Trustee asserting
6 he just learned that the Estate promised to not enforce the judgment so long as
7 Mr. Fessenden was fulfilling his obligations? (The Trustee drafted the agreement
8 and also obtained Mr. Fessenden's signature on the Settlement Agreement
9 behind the back of the undersigned counsel.)

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11 3. No opportunity to cure known defects. The court's prior ruling specifically
12 identified areas in which the Trustee lacked sufficient evidence. For example, the
13 court twice stated that the Duncanson easement issue might or might not be a
14 permissible deduction from gross proceeds. Nevertheless, the Trustee did not
15 introduce any other evidence with respect to the Duncanson easement. That was
16 a strategic choice and the court should not allow the Trustee to belatedly submit
17 any evidence.

18 4. Appearance of Fairness. The Trustee has already had two submissions, and Mr.
19 Fessenden one. A dispassionate observer could conclude that giving the Trustee
20 a third submission would not appear to be fair to Mr. Fessenden.

21 Mr. Fessenden moves the court to vacate its order granting the Trustee leave to file a
22 "reply."
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1 Respectfully submitted this 8th day of March 2019.
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By: s/Lawrence R. Cock
Lawrence R. Cock, WSBA No. 20326
Attorney for Beau Fessenden
CFL LAW GROUP, LLP
1001 4th Avenue, Suite 3900
Seattle, Washington 98154
(206) 812-0836 phone
[Email: lrc@corrcronin.com](mailto:lrc@corrcronin.com)

*Attorneys for Beau R. Fessenden, individually and his
marital community*

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered E-Service Recipients:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of March, 2019, at Seattle, Washington.

By: *s/Irina Kinyon*
Irina Kinyon, PP
CFL LAW GROUP, LLP
1001 4th Avenue, Suite 3900
Seattle, Washington 98154
(206) 292-8800 phone
ikinyon@corrcronin.com